669

(1)

SEP 6 1941

CHARLES ELMORE CRO

IN THE

SUPREME COURT OF THE UNITED STATES

No. 590

3146 #4
STA-SYS

OCTOBER TERM, 1941.

STANDARD OIL CO. OF NEW JERSEY,
Petitioner,

v.

THE UNITED STATES.

Petition for a Writ of Certiorari to the United States Court of Customs and Patent Appeals

September, 1941.

EDWARD P. SHARRETTS,
Attorney for Petitioner,
42 Broadway,
New York, N. Y.

Edward P. Sharretts

452 Appeal Printing Co., Inc., 130 Cedar St., New York

INDEX

	PAGE
Opinions below	1
Jurisdiction	2
Question presented	2
Constitutional provision and statutes	3
Statement	4
Reasons for granting the writ	6
Conclusion	13
Appendix	14

Citations

Cases:

Asiatic Petroleum Ltd. v. *Insular Collector of Customs*, 297 U. S. 666	5
Gibbons v. *Ogden*, 9 Wheat. 1	6
McGoldrick v. *Gulf Oil Corp.*, 309 U. S. 414	6
United States v. *Dewitt*, 9 Wall. 44	8
Trade Mark Cases, 100 U. S. 96	8
License Tax Cases, 5 Wall. 470	8
Carter v. *Carter Coal Co.*, 298 U. S. 238, 298	8
State Tonnage Tax Cases, 12 Wall. 216	10
Sherlock v. *Alling*, 93 U. S. 103	10
Sinnot v. *Davenport*, 22 How. 243	10
Cooley v. *Board of Wardens*, 12 How. 314	10
Lord v. *Goodall*, 102 U. S. 544	10
Henderson v. *New York*, 92 U. S. 270	10
Gilman v. *Philadelphia*, 3 Wall. 724	10
Crew Levick Co. v. *Pennsylvania*, 245 U. S. 292	10

(32567

PAGE

Dahnke-Walker Milling Co. v. *Bondurant Co.*, 257 U. S. 282 10

Bouman v. *Chicago etc. R. Co.*, 125 U. S. 482..... 10

Railroad Commission v. *Texas etc. R. Co.*, 229 U. S. 336 10

Texas etc. R. Co. v. *Sabine Tram Co.*, 227 U. S. 111 10

Barham Co. v. *United States*, 70 Treasury Decisions 1038, T.D. 48733 12

Statutes:

Judicial Code, sec. 195, as amended, 28 U.S.C., sec. 308 14

Tariff Act of 1930:
Sec. 557 (19 U.S.C.A., sec. 1557) 16

Revenue Act of 1932:
Sec. 601(c)(4) (47 Stat. 260) 4
Sec. 630 (48 Stat. 256) 4

Miscellaneous:

77 Cong. Rec., Part III, pp. 1312-1314 17-21

S. Rep. No. 58, 73rd Cong. 1 Session 21-22

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

STANDARD OIL CO. OF NEW JERSEY,
Petitioner,

v.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

The Standard Oil Company of New Jersey prays that a writ of certiorari be issued to review the judgment of the United States Court of Customs and Patent Appeals entered June 9, 1941, affirming a judgment of the United States Customs Court.

Opinions Below

The decision of the United States Court of Customs and Patent Appeals which your Petitioner seeks to have reviewed by this Court was rendered on June 9, 1941 and is reported in *Standard Oil Co. of New Jersey* v. *The United States,* C.A.D. 174, and printed in the present transcript of record (pp. 14-19).

The decision of the United States Court of Customs and Patent Appeals affirmed a decision of the United States Customs Court. The decision of the United States Customs Court is reported in *Standard Oil Co. of New Jersey* v. *The United States,* C.D. 392 (R. 8, 9, 10, 11, 12).

The decision of the United States Customs Court affirmed the decision of the U. S. Collector of Customs at the port of New York. The Collector of Customs at the port of New York assessed certain fuel oil with a tax of ½ cent per gallon under Section 601(c)(4) of Title IV of the Revenue Act of 1932 (47 Stat. 260) and declined to allow the exemption provided in Section 630 of said Act as amended June 16, 1933 (48 Stat. 256); see also Collector's Memorandum (R. 5).

Jurisdiction

The judgment of the United States Court of Customs and Patent Appeals was entered June 9, 1941 (R. 20). The jurisdiction of this Court is invoked under Section 195 of the Judicial Code, as amended (28 U.S.C., Sec. 308); see also rules 42 and 38 of the revised rules of the Supreme Court of the United States.

Question Presented

The Standard Oil Company of New Jersey imported certain fuel oil into the United States and entered it in bond as permitted by Section 557 of the Tariff Act of 1930 (19 U.S.C.A., Sec. 1557). Later the said fuel oil was withdrawn from bonded warehouse and sold for use as fuel supplies on the Steamship "Leviathan", a vessel which had been sold by its American owners to British owners and registered as a British vessel. The said Steamship "Leviathan" was navigated under its own power to Rosyth, Scotland, without passengers or cargo and was there broken up into scrap metal. The Collector of Customs at the port of New York assessed a tax of ½ cent per gallon upon the fuel oil supplied to the "Leviathan" under Section 601(c)(4) of the Revenue Act of 1932 and refused to allow exemption from such tax

provided in Section 630 of the said Act for fuel oil sold for use as fuel supplies on vessels actually engaged in foreign trade. The question presented is: Was the Leviathan actually engaged in foreign trade within the meaning of said Section 630?

Constitutional Provision and Statutes

Art. 1, Sec. 8, Clause 3, Constitution of the United States (see Appendix p. 14).

Sec. 601(c)(4) Title IV of the Revenue Act of 1932 (This provision was originally enacted June 6, 1932, c. 209, Sec. 601(c)(4), 47 Stat. 260. It was extended to 1935, 1937, and 1939, by the following Acts and Resolutions: June 16, 1933, c. 90, §212, 48 Stat. 206; June 28, 1935, c. 333, 49 Stat. 431; June 29, 1937, c. 402, 50 Stat. 358. The text of the provision is printed at page 4 of the present petition).

Section 630 of the Revenue Act of 1932 (This section was added to the Revenue Act of 1932 on June 16, 1933, 48 Stat. 256. It was amended by the inclusion of certain additional matter on May 28, 1938, c. 289, Sec. 705, 52 Stat. 570, 26 U.S.C.A., Sec. 3451. The text of the provision in effect when the fuel oil was supplied to the Steamship "Leviathan" (January 21 and 22, 1938) is printed at pages 4 and 5 of the present petition).

Section 195 of the Judicial Code as amended, 28 U.S.C., Sec. 308 (see Appendix pp. 14, 15, 16).

Section 557 of the Tariff Act of 1930 (19 U.S.C.A., Sec. 1557) (see Appendix pp. 16, 17).

77 Cong. Rec. Part III, pp. 1312-1314 (for full discussion in the U. S. Senate see Appendix pp. 17, 18, 19, 20, 21).

Statement

The facts in the present case are all agreed to in a stipulation between counsel (R. 6, 7, 8).

It is conceded that 1,640,944 gallons of fuel oil were imported into the United States at the port of New York and entered into bonded warehouse under Warehouse Bond No. 103273 on January 18, 1938. It is conceded further that said fuel oil was sold for use as fuel supplies on the Steamship "Leviathan", a vessel of Great Britain; that the said fuel oil was laden aboard the "Leviathan" and used as fuel between New York and Rosyth, Scotland; that the "Leviathan" was sold while at the port of New York for the purpose of proceeding to Scotland under her own power to be there reduced to scrap metal; that she left New York in ballast without cargo or passengers.

The fuel oil in question was assessed at ½ cent per gallon under Section 601(c)(4) of Title IV of the Revenue Act of 1932, which provides as follows:

> "(4) Crude petroleum, ½ cent per gallon; fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum, except lubricating oil and gasoline or other motor fuel, ½ cent per gallon; gasoline or other motor fuel, 2½ cents per gallon; lubricating oil, 4 cents per gallon; paraffin and other petroleum wax products, 1 cent per pound. The tax on the articles described in this paragraph shall apply only with respect to the importation of such articles".

The Petitioner claims that it was exempt from such tax under Section 630 of the Revenue Act of 1932 as amended, which provides as follows:

> "SEC. 630. EXEMPTION FROM TAX OF CERTAIN SUPPLIES FOR VESSELS. Under regulations prescribed

> by the Commissioner, with the approval of the Secretary, no tax under this title shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this title, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of Section 601(b)".

If the "Leviathan" was actually engaged in foreign trade, the fuel oil was exempt from the tax.

The Collector's report which is in evidence by stipulation correctly states the Petitioner's position as follows (R. 5, 6):

> "The oil in question was laden aboard the S.S. 'Leviathan' and was used as fuel between New York and Rosyth, Scotland. If upon this voyage the 'Leviathan' actually engaged in foreign trade, the tax should not have been assessed, and the protest should be allowed. In the words of Mr. Justice Roberts in *Asiatic Petroleum Ltd.* v. *Insular Collector of Customs,* 297 U. S. 666. the section applies to fuel oil sold to all vessels, of whatever registry *trading with foreign countries".* (Italics supplied.)

The issue may, therefore, be narrowed to the question: Was the "Leviathan" actually engaged in foreign trade?

The Leviathan was not carrying merchandise or passengers but her navigation from New York to Rosyth, Scotland, was an obviously necessary part of a foreign

trade transaction, namely, the sale of the vessel and her reduction to scrap metal in Scotland. Furthermore, it is Petitioner's claim that the sale of the fuel oil to navigate the "Leviathan" from New York to Rosyth, Scotland, was a foreign trade transaction. However, Petitioner feels that it is not necessary to rely solely on the sale of the vessel or the sale of the fuel oil. "Navigation" of the vessel from New York to Rosyth, Scotland, was in itself foreign trade. Petitioner claims that the applicable principle was first announced more than a century ago in the famous case of *Gibbons* v. *Ogden,* 9 Wheat. 1. It was there decided that "navigation" *per se* comes within the commerce clause of the Constitution because it is universally acknowledged that navigation itself is a "branch of trade".

The decision of the United States Court of Customs and Patent Appeals holds that the "Leviathan" was not actually engaged in foreign trade within the meaning of Section 630 and that the fuel oil here in question was not entitled to the exemption there provided. The Petitioner seeks a reversal of that decision.

Reasons for Granting the Writ

1. Petitioner does not claim that a constitutional question is directly involved in the present proceeding. However, the power of the Congress to allow the exemption from the tax to fuel oil supplied to vessels engaged in foreign trade, as prescribed in Section 630 of the Revenue Act of 1932 is derived from Article 1, Section 8, Clause 3 of the Constitution. (*McGoldrick* v. *Gulf Oil Corp.,* 309 U. S. 414.) In the latter case this Court fully discussed the said Section 630 of the Revenue Act

of 1932 and Mr. Justice Stone speaking for this Court said with respect to said Section (op. p. 424):

> "By virtue of the terms already noted of §§601 and 630 of the Revenue Act of 1932, these provisions were extended to articles sold for fuel to vessels engaged in foreign trade, and the provisions of statutes and regulations relating to withdrawal from manufacturing bonded warehouses for export were thus extended to similar withdrawals of fuel oil for disposition as ships' stores".

At page 426 of the opinion Mr. Justice Stone says in referring to such fuel oil:

> "It cannot lawfully be removed from the manufacturing warehouse except for delivery for use as fuel to a vessel engaged in foreign commerce and it cannot lawfully be diverted from such destination and use and cannot, after delivery to the vessel, be landed in the United States".

At page 428 of the opinion Mr. Justice Stone says with respect to fuel oil thus withdrawn from bonded warehouse and supplied to vessels:

> "The laying of a duty on imports, although an exercise of the taxing power, is also an exercise of the power to regulate foreign commerce, *Hampton & Co.* v. *United States,* 276 U. S. 394, 411; *Board of Trustees* v. *United States, supra,* 58. The exemption of imports from the duty or the allowance of a drawback when they are devoted to particular purposes or uses, or when they are exported or otherwise sent out of the country, is likewise a regulation of foreign commerce, see *Gibbons* v. *Ogden,* 9 Wheat. 1, 201, 202; *Groves* v. *Slaughter,* 15 Pet. 449, 505".

In the light of the foregoing we quote the following from the opinion of the Court of Customs and Patent Appeals below (R. 17):

> "Appellant argues that foreign trade is a part of foreign commerce and that since navigation is a part of foreign commerce and since the Supreme Court has held that navigation was trade, the term 'engaged in foreign trade' used in section 630 must cover the transaction at bar.
>
> We are of the opinion that the decision in *Gibbons* v. *Ogden, supra,* has little, if any, bearing on the case at bar. Certainly the principle there announced is not controlling of the issue presented here".

Petitioner claims that the rule of interpretation repeatedly adopted by this Court in construing the phrase "commerce with foreign nations" in the commerce clause of the Constitution should have been followed by the lower Court in construing the phrase "foreign trade" in Section 630 of the Revenue Act of 1932. This Court has repeatedly treated the words "commerce" and "trade" as synonymous in dealing with questions of foreign and interstate trade. *Gibbons* v. *Ogden, supra,* pp. 192, 193; *United States* v. *Dewitt,* 9 Wall. 44; *Trade Mark Cases,* 100 U. S. 96; *License Tax Cases,* 5 Wall. 470; *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 298.

It will be noted in the above quotations from the opinion of this Court in *McGoldrick* v. *Gulf Oil Corp., supra,* that this Court refers to the exemption in Section 630 as applying to "vessels engaged in foreign commerce" and to the section as "a means of regulating and promoting foreign commerce". Throughout the opinion the terms "foreign trade" and "foreign commerce" are used synonymously and interchangeably.

If, as decided by the lower Court, the "Leviathan" because of lack of cargo or because she was to be reduced

to scrap at the termination of her foreign voyage was not engaged in foreign trade, then, she was not engaged in foreign commerce. If she was not engaged in foreign commerce, the Congress had no power over her registration, clearance and navigation. *Gibbons* v. *Ogden, supra,* p. 190. While the immediate result of the judgment below is the denial of the exemption from the tax, yet, the findings upon which the judgment is based, namely, that the sale of the vessel for transportation to a foreign country, the sale of the fuel oil for her foreign voyage and the "navigation" *per se* of the vessel, do not constitute foreign trade, would, if accepted as final, constitute a modification of the principles repeatedly announced by this Court and, indeed, a serious modification of the power of the Congress over navigation.

2. It is well settled law that "navigation" *per se* regardless of cargoes is "commerce" within the meaning of that term as used in Article 1, Section 8, Clause 3, of the Constitution of the United States. In so deciding Mr. Chief Justice Marshall speaking for this Court in *Gibbons* v. *Ogden, supra,* pointed out that the Embargo Laws which applied to navigation were bitterly opposed in many sections of the country by men to whom could not be imputed a want of acuteness in discovering objections to the Embargo Laws, "Yet", says the great Chief Justice: "They never suspected that navigation was no branch of trade, and was, therefore, not comprehended in the power to regulate commerce (op. pp. 192, 193).

The Chief Justice says further: "No example could more strongly illustrate the universal understanding of the American people on this subject".

This Court following *Gibbons* v. *Ogden, supra,* has repeatedly held that the term "commerce" as used in the

Constitution includes "navigation" *per se*. *State Tonnage Tax Cases*, 12 Wall. 216; *Sherlock* v. *Alling*, 93 U. S. 103; *Sinnot* v. *Davenport*, 22 How. 243; *Cooley* v. *Board of Wardens*, 12 How. 314; *Lord* v. *Goodall*, 102 U. S. 544; *Henderson* v. *New York*, 92 U. S. 270; *Gilman* v. *Philadelphia*, 3 Wall. 724.

Petitioner contends that the decision of the Court of Customs and Patent Appeals holding that the navigation of the "Leviathan" from New York to Rosyth, Scotland, was not foreign trade was in conflict with the principles repeatedly announced by this Court.

3. The sale of the "Leviathan" by American owners to foreign owners and the transportation of the "Leviathan" from New York to Rosyth, Scotland, pursuant to such sale, was foreign commerce and foreign trade. *Crew Levick Co.* v. *Pennsylvania*, 245 U. S. 292; *Dahnke-Walker Milling Co.* v. *Bondurant Co.*, 257 U. S. 282. The latter case deals with interstate trade but the same principle applies to foreign trade *Bowman* v. *Chicago etc. R. Co.*, 125 U. S. 482. See also *Railroad Commission* v. *Texas etc. R. Co.*, 229 U. S. 336; *Texas etc. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111.

4. The sale of the fuel oil for use in navigating the "Leviathan" from New York to Rosyth, Scotland, was foreign commerce and foreign trade. *McGoldrick* v. *Gulf Oil Corp., supra.*

5. The exemption from the tax on the fuel oil supplied to the "Leviathan" was within the clear purpose of Section 630 of the Revenue Act of 1932. On this point Mr. Justice Stone speaking for this Court in *McGoldrick* v. *Gulf Oil Corp., supra*, says at page 427 of the opinion:

> "The obvious tendency of the exemption, from the tax laid upon importation of crude petroleum, when it or its product is used as ships' stores by vessels engaged in foreign commerce is to encourage importation of the crude oil for such use and thus to enable American refiners to meet foreign competition and to recover trade which had been lost by the imposition of the tax. That tendency, and the tendency of the sale of tax-free fuel to vessels engaged in foreign commerce to promote the commerce, were considerations to be taken into account by Congress in fixing the terms of the statute, and its adoption as a means of regulating and promoting foreign commerce was within the Congressional power. *Board of Trustees* v. *United States,* 289 U. S. 48."

The purpose of Section 630 was fully explained by Senator Reed of Pennsylvania who had the bill in charge when the amendment was offered in the United States Senate. (77 Cong. Rec., Part III, pp. 1312-1314.)

In 1932 the Congress in Section 601(c)(4) of Title IV of the Revenue Act of 1932 assessed a tax of ½ cent per gallon on fuel oil derived from petroleum. This had an unfortunate effect because vessels, touching at foreign ports, purchased their fuel supplies in such foreign ports thus avoiding the tax. The result was that the government was losing the tax and American companies were losing the business. In order to provide a remedy Congress, on June 16, 1933, amended the Revenue Act by enacting Section 630 (*Barham Co.* v. *United States,* 70 Treasury Decisions 1038, T.D. 48733). The obvious purpose of the amendment was to exempt from tax fuel oil supplied to any vessels privileged to stop at foreign ports, that is to say, vessels engaged in foreign trade, the fisheries, the whaling business and vessels plying between American ports on the Atlantic and American

ports on the Pacific. Thus Senator Reed in explaining the amendment said:

> "Mr. Reed: Mr. President, the idea is this: At the present time, ships under the American flag or foreign flags, engaged in the various services mentioned here, all have opportunity to buy their fuel oil at foreign ports, and since we have put a tax on that oil they have all been doing it. At the present time we are not getting any revenue out of vessels engaged in these services. We will not get any revenue out of them if this section passes; but Americans will get the business of selling to them, which, at present is prevented by the imposition of the tax".

See also report of Senator Harrison, Chairman of the Finance Committee on the amendment (Report No. 58, 73rd Congress, 1 Session—May 1, 1933 to accompany H.R. 5040).

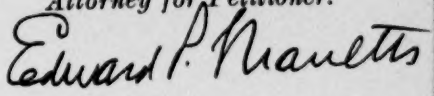
Obviously the "Leviathan" could have taken on sufficient fuel oil to carry her as far as Halifax and there taken on tax free fuel for the balance of her voyage. This would have been the very evil the amendment was intended to remedy.

Petitioner claims that the decision of the United States Court of Customs and Patent Appeals defeated one of the purposes of the amendment.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

EDWARD P. SHARRETTS,
Attorney for Petitioner.



September, 1941.

Appendix

Art. 1, Section 8, Clause 3 of the Constitution of the United States:

> To regulate Commerce with foreign Nation, among the several States, and with the Indian Tribes.

Sec. 601(c)(4) Title IV of the Revenue Act of 1932. (This provision was originally enacted June 6, 1932, c. 209, Sec. 601(c)(4), 47 Stat. 260. It was reenacted without change in 53 Stat. 414, 26 U.S.C.A., Sec. 3422. The text of the provision is printed at page 4 of the present petition.)

Sec. 630 of the Revenue Act of 1932. (This section was added to the Revenue Act of 1932 on June 16, 1933, 48 Stat. 256. It was amended by the inclusion of certain additional matter on May 28, 1938, c. 289, Sec. 705, 52 Stat. 570, 26 U.S.C.A., Sec. 3451. The text of the provision in effect when the fuel oil was supplied to the Steamship "Leviathan" (January 21 and 22, 1938) is printed at page 4 of the present petition.)

Section 195 of the Judicial Code as amended, 28 U.S.C., Section 308:

> (Judicial Code, section 195, amended.) Review of Decisions of United States Customs Court. The Court of Customs and Patent Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by the United States Customs Court in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said court, and all ap-

pealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs and Patent Appeals shall be final in all such cases: PROVIDED, HOWEVER, That in any case in which the judgment or decree of the Court of Customs and Patent Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the application of either party, duly made as required by section 350 of this title, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court: AND PROVIDED FURTHER, That the first proviso of this section shall not apply to any case involving only the construction of section 1, or any portion thereof, of an Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909 (Thirty-sixth Statutes, page 11), nor to any case involving the construction of section 2 of an Act entitled "An Act to promote reciprocal trade relations with the Dominion of Canada, and for other purposes," approved July 26, 1911 (Thirty-seventh Statutes, page 11). (Aug. 5, 1909, c. 6, §29, 36 Stat. 106; Mar. 3, 1911, c. 231, §195, 36 Stat. 1145; Aug. 22, 1914, c. 267, 38 Stat. 703; Sept. 6, 1916, c. 448, §6, 39 Stat. 727; Feb. 13, 1925, c. 229, §8, 43 Stat. 940; May 28, 1926, c. 411, §1, 44 Stat. 669; Jan. 31, 1928, c. 14, §1, 45 Stat. 1475; Mar. 2, 1929, c. 488, §1, 45 Stat. 1475; June 17, 1930, c. 497, Title IV, §647, 46 Stat. 762.)

It should be noted that Section 601(b) of the Revenue Act of 1932 declares that the tax imposed by Section 601(c)(4) "shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of

1930 and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act * * *". (See *McGoldrick* v. *Gulf Oil Corp., supra,* pp. 423, 424.)

Section 557 of the Tariff Act of 1930, 19 U.S.C.A., Section 1557:

> Sec. 1557. ENTRY FOR WAREHOUSE; WAREHOUSE PERIOD; DRAWBACK
>
> Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at any time within three years (or ten months in the case of grain) from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port: PROVIDED, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed three years (or ten months in the case of grain) from the date of importation. Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within three years (or ten months in the case of grain) after the date of importation for exportation or for transportation and exportation to a foreign country,

or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, 99 per centum of the duties thereon shall be refunded.

Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded. (June 17, 1930, c. 497, Title IV, §557, 46 Stat. 744.)

77 Cong. Rec., Part III, pp. 1312-1314:

"Mr. Harrison: * * * There is also a provision that deals with fuel oils and ships' stores and sea stores. It was found that many of the vessels which carry on the foreign trade heretofore had bought their fuel oil in this country, but since the passage of the tax act they have changed their practice and are filling their tanks abroad in the ports of foreign countries, and we are losing that trade. A provision is recommended by the committee that in the case of fuel oil, ships' stores, and so forth, as involved in this class of foreign trade, the tax shall not be imposed. It will be seen from a reading of the bill that it does not apply to coastwise vessels at all, but only to those engaged in foreign trade."

* * * * * * *

"Mr. White: Mr. President, will the Senator recur to section 630? That section relates to a tax imposed upon fuel supplies, ships' stores, sea

stores, and so forth, and provides that this tax shall not be collected on such stores used on war vessels either of the United States or of a foreign country. That is right; is it not?

"Mr. Harrison: Yes.

"Mr. White: Then it goes on and refers to these stores and supplies used upon vessels employed in the fisheries or in the whaling business, and so forth. I take it this exempts from the tax only those stores used on American ships.

"Mr. Harrison: The Senator from Pennsylvania (Mr. Reed) offered this amendment, and I should like to hear his interpretation of that.

"Mr. Reed: Mr. President, the idea is this:

At the present time, ships under the American flag or foreign flags, engaged in the various services mentioned here, all have opportunity to buy their fuel oil at foreign ports, and since we have put a tax on that oil they have all been doing it. At the present time we are not getting any revenue out of vessels engaged in these services. We will not get any revenue out of them if this section passes; but Americans will get the business of selling to them, which at present is prevented by the imposition of the tax.

"Mr. White: To repeat my question, are foreign vessels employed in the fisheries or in the whaling business exempted from the tax on the use of these articles?

"Mr. Reed: I think they would be, and they ought to be, because at present they are buying their supplies abroad; and not only do we get no tax, but American suppliers do not get any of the business.

"Mr. White: Of course there are no foreign vessels engaged in trade between the Atlantic and Pacific ports of the United States.

"Mr. Reed: That is true.

"Mr. White: The inclusion of that clause led me to believe that perhaps this second portion applied only to American ships.

"Mr. Reed: No; I should not so construe it. The reason for putting in ships plying between the Atlantic and Pacific ports of the United States is that those ships touch, or can touch at foreign ports, and can there pick up foreign oil tax-free.

"Mr. White: May I ask the Senator the origin of this suggestion?

"Mr. Reed: The origin was with some of the oil companies. Having received the suggestion from these companies, and feeling unable myself to detect any 'joker' that might be in it, I submitted it first to the experts of the Joint Committee on Internal Revenue Taxation, and next to the Treasury Department, and was told by both of those authorities that the amendment seemed to them to be a proper one, and they saw no defect in it.

"Mr. White: Was it submitted to anyone having a special interest in the shipping of the United States? Was it submitted to the Shipping Board?

"Mr. Reed: No; I do not think it was, so far as I know; but I should think they would be very anxious to have it adopted. At the present time the trans-Atlantic liners which used to buy all their fuel oil in New York and other American ports are buying European oil in European ports, enough to carry them on the round trip. We are not only getting no tax out of those vessels but we are getting no business out of them.

"Mr. White: That relates to vessels in the North Atlantic trade.

"Mr. Reed: That is right.

"Mr. White: But what about other vessels?

"Mr. Reed: I am told by one of the Senators from California that this will be very helpful to them in enabling them to sell to the trans-Pacific trade.

"Mr. White: Of course, it is an entirely new suggestion so far as I am concerned, and I do not know that I have any very definite notions about it. I am just suspicious about it; that is all.

"Mr. Reed: What suspicion has the Senator?

"Mr. White: I am not sure that I like to see foreign ships and American ships put on precisely the same plan respecting this matter.

"Mr. Reed: Well, at the present time neither of them is buying any American oil. We want to get that business.

"Mr. White: Is that an entirely accurate statement?

"Mr. Reed: No; I think that is probably too sweeping. I should say that the vast bulk of the business has been lost. There may be exceptions.

"Mr. Fletcher: Mr. President, may I ask the Senator whether this provision imposes any additional tax on American shipping?

"Mr. Reed: No, Mr. President; it does not.

"Mr. Fletcher: I do not see how they could object, if it does not impose any additional tax on them.

"Mr. Reed: I do not see where they could have any objection.

"Mr. Connally: Mr President, I desire to ask the Senator from Pennsylvania a question. Why should vessels engaged in whaling and the fisheries be exempt? They do not necessarily touch at foreign ports; do they?

"Mr. Reed: Because they can very easily do so.

"Mr. Connally: Where?

"Mr. Reed: Take a ship that goes whaling to the south Pacific Ocean: It can pick up its oil in a hundred places.

"Mr. Connally: I can see no reason for exempting all the fishing industry and the whaling vessels when we make our coastwise vessels engaged in commercial pursuits pay this tax. I see

no reason why a vessel doing business between the Atlantic and the Pacific, going through the Panama Canal, all of which is our territory, should be exempt from this tax.

"Mr. Reed: Oh, no; on the contrary, the whole Caribbean Sea is not our territory by any means.

"Mr. Connally: The Panama Canal is under our control.

"Mr. Reed: The Panama Canal is; but those vessels are in a position to pick up foreign oil, and we want to get the business for American producers.

"Mr. Connally: I am not quarreling with the part with reference to foreign commerce; but I do not see any reason why we should exempt the fishing people and the whaling people from the payment of the tax.

"Mr. Reed: The whalers, I think, clearly ought to be exempted, because all of them go into foreign waters. The fishing ships may or may not.

"Mr. Connally: Where would they buy oil if they were going into the South Polar or Antarctic region? There are no oil stations there.

"Mr. Reed: They pass a hundred ports at which tankers from Persia could fill them up, and in which tankers are situated that would be glad to have the business".

We also quote the following from the report of Senator Harrison, Chairman of the Finance Committee on the amendment (Report No. 58, 73 Congress 1 Session—May 1, 1933—To accompany H.R. 5040):

"Your committee has inserted a new section 5 providing for exemption from the manufacturers' excise taxes under the Revenue Act of 1932 of articles sold for use as supplies or equipment on vessels of war, vessels employed in the fisheries of whaling business, or actually engaged in foreign

trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. It is believed that this amendment will enable American manufacturers to compete more favorably with their foreign competitors for this business without any substantial loss of revenue since the effect of the present law is to force purchases abroad. The bill also provides for allowance of drawback on articles manufactured or produced with the use of merchandise on the importation of which tax has been paid under the Revenue Act of 1932, when such articles are laden for use as supplies on vessels of the classes enumerated. This also relieves American manufacturers from a competitive disadvantage."

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question Presented	2
Statutes Involved	2
Statement	3
Argument	5
Conclusion	6

CITATIONS

Cases:	
Gibbons v. *Ogden*, 9 Wheat. 1	6
Houghton v. *Payne*, 194 U. S. 88	5
Maillard v. *Lawrence*, 16 How. 250	5
McGoldrick v. *Gulf Oil Corp.*, 309 U. S. 414	6
Memphis & Little Rock Railroad Co. v. *Railroad Commissioners*, 112 U. S. 609	5
Nix v. *Hedden*, 149 U. S. 304	5
Oklahoma ex rel. Oklahoma Tax Commission v. *Barnsdall Refineries, Inc.*, 296 U. S. 521	6
Pacific Co., Ltd., v. *Johnson, State Treasurer*, 285 U. S. 480	6
Yazoo & Mississippi Valley Railroad Co. v. *Thomas*, 132 U. S. 174	6
Statutes:	
Revenue Act of 1932:	
Sec. 601 (c) (4) (47 Stat. 259–260)	2
Revenue Act of 1932, as amended:	
Sec. 630 (48 Stat. 256)	3, 5
Miscellaneous:	
77 Cong. Rec., Part III, pp. 3212–3214	5
Funk & Wagnalls, New Standard Dictionary	5
S. Rep. 58, 73d Cong., 1st Sess.	5

418368—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 590

STANDARD OIL COMPANY OF NEW JERSEY,
PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court (R. 8) is reported in 5 U. S. Cust. Ct. 166. The opinion of the United States Court of Customs and Patent Appeals (R. 13) is reported in C. A. D. 174, 77 Treas. Dec., Advance Sheets No. 1 (July 3, 1941), page 39.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered on June

9, 1941 (R. 18). The petition for a writ of certiorari was filed on September 6, 1941. The jurisdiction of this Court is invoked under section 195 of the Judicial Code, as amended (U. S. C., title 28, sec. 308).

QUESTION PRESENTED

A steamship was bought from American owners by British purchasers for reduction to scrap metal upon its arrival in Scotland. Petitioner sold imported fuel oil for use by the steamship on its voyage from New York to Scotland, made in ballast without cargo or passengers. The question is whether the vessel was "actually engaged in foreign trade" so as to be exempt from the tax on fuel oil.

STATUTES INVOLVED

Section 601 (c) (4) of the Revenue Act of 1932 (47 Stat. 169, 259–260):

> (c) There is hereby imposed upon the following articles sold in the United States by the manufacturer or producer, or imported into the United States, a tax at the rates hereinafter set forth, to be paid by the manufacturer, producer, or importer:
>
> * * * * *
>
> (4) Crude petroleum, ½ cent per gallon; fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum, except lubricating oil and gasoline or other motor fuel, ½ cent

per gallon; gasoline or other motor fuel, 2½ cents per gallon; lubricating oil, 4 cents per gallon; paraffin and other petroleum wax products, 1 cent per pound. The tax on the articles described in this paragraph shall apply only with respect to the importation of such articles.

Revenue Act of 1932, as amended (48 Stat. 256):

SEC. 630. *Exemption from Tax of Certain Supplies for Vessels.*

Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this title shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this title, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 601 (b).

STATEMENT

The stipulated facts may be summarized as follows: Petitioner sold 1,640,944 gallons of imported

fuel oil, which had been withdrawn from bonded warehouse, for use as fuel supplies on the steamship *Leviathan*. The ship, then at the port of New York, had been bought from its American owners by British purchasers for reduction to scrap metal upon its arrival in Scotland. The *Leviathan* left New York on January 22, 1938, in ballast, without cargo or passengers, and made the voyage from New York to Rosyth, Scotland, under her own power. The oil sold by petitioner was used as fuel between New York and Rosyth (R. 6–8).

The Collector of Customs at the port of New York assessed one-half cent per gallon against the 1,640,944 gallons of fuel oil, pursuant to section 601 (c) (4) of the Revenue Act of 1932, and denied any exemption from said tax under section 630 of the Revenue Act of 1932, *supra*. Petitioner filed a protest against the collector's denial, contending that the fuel oil was sold as fuel supplies to a vessel actually engaged in foreign trade within the meaning of section 630, and therefore entitled to exemption from the tax (R. 4).

The United States Customs Court overruled the protest and rendered judgment for the United States (R. 8–11). The United States Court of Customs and Patent Appeals affirmed the judgment of the United States Customs Court (R. 13–18).

ARGUMENT

Section 630 of the Revenue Act of 1932, *supra*, exempts from the fuel oil tax any oil used as fuel by vessels "actually engaged in foreign trade." In the ordinary use of the phrase, a vessel which sails, without cargo or passengers, to a yard, there to be converted to scrap, is the object of, and is not "engaged" in, trade.[1] Congress may be supposed to have used the term in its ordinary sense. *Maillard* v. *Lawrence*, 16 How. 250, 261; *Nix* v. *Hedden*, 149 U. S. 304; *Houghton* v. *Payne*, 194 U. S. 88, 99.[2]

But even if the sale of the *Leviathan* meant that it was engaged in trade, that trade was not foreign. Its sale was consummated by delivery in the United States (R. 7). Obviously the navigation of the ship from New York to Scotland was an act separate from the sale and constituted another and different transaction. The sale of the vessel and its subsequent navigation were not sufficient to justify a holding that the vessel was

---

[1] Funk & Wagnalls New Standard Dictionary defines "foreign trade" to be: "the commercial interchange of commodities from different countries; export and import trade."

[2] Nothing in the legislative history of section 630 indicates that Congress contemplated the inclusion of a transaction like the one in the instant case in the definition of "foreign trade." See S. Rpt. 58, 73d Cong., 1st Sess., 77 Cong. Rec., Part III, pp. 3212–3214.

actually engaged in foreign trade within the meaning of that term as used in section 630, *supra.*

Neither *Gibbons* v. *Ogden,* 9 Wheat. 1, nor *McGoldrick* v. *Gulf Oil Corp.,* 309 U. S. 414, upon which petitioner relies to sustain its contention that the *Leviathan* was engaged in foreign trade, are in point. Both involve only issues of the constitutional reach of the federal government over navigation and foreign trade. Neither was concerned with the question of the statutory interpretation of section 630 of the Revenue Act of 1932.

Statutes granting tax exemptions are to be strictly construed. *Memphis & Little Rock Railroad Co.* v. *Railroad Commissioners,* 112 U. S. 609, 617–618; *Yazoo & Mississippi Valley Railroad Co.* v. *Thomas,* 132 U. S. 174, 185; *Pacific Co., Ltd.* v. *Johnson, State Treasurer,* 285 U. S. 480, 491; *Oklahoma ex rel. Oklahoma Tax Commission* v. *Barnsdall Refineries, Inc.,* 296 U. S. 521. The construction placed upon the statute by the court below is reasonable, and is consistent with rules of construction long approved by this Court.

CONCLUSION

The decision below is correct and is not in conflict with any other decision. The case turns on its peculiar facts and presents no question of large public importance. The petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Acting Solicitor General.
PAUL P. RAO,
Assistant Attorney General.
CHARLES D. LAWRENCE,
Special Assistant to the Attorney General.
RICHARD F. WEEKS,
JOHN R. BENNEY,
Attorneys.

SEPTEMBER 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941